

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2090.04
COMPLAINT INVESTIGATOR:	Sally Cook
DATE OF COMPLAINT:	February 3, 2004
DATE OF REPORT:	March 4, 2004
REQUEST FOR RECONSIDERATION:	yes/April 2, 2004 - no changes
DATE OF CLOSURE:	April 26, 2004

COMPLAINT ISSUES:

Whether the C A Beard Memorial School Corporation and the New Castle Area Programs for Exceptional Children violated:

511 IAC 7-21-7 by failing to provide transportation for the Student during a period of time in the spring of the 2002-2003 school year.

511 IAC 7-25-4(k) by failing to ensure that a copy of the initial evaluation report was made available no less than 5 instructional days prior to the scheduled case conference committee (CCC) meeting.

511 IAC 7-25-3(j) by failing to ensure that information obtained from various sources, including information provided by the parent, is documented and carefully considered by the CCC in determining eligibility for special education and the content of the student's individualized education program (IEP).

511 IAC 7-27-5(a) and (b) by failing to provide to the parent a written notice, in accordance with 511 IAC 7-22-2(d), of the refusal to initiate or change the student's special education placement, specifically the refusal to assign an aide.

511 IAC 7-27-4(a)(3) and 511 IAC 7-27-2 by failing to convene a CCC meeting upon request of the parent and within the timeframe previously agreed upon by the CCC.

511 IAC 7-27-5(c) by failing to provide the parent with a copy of the written CCC report within 10 business days after the date of the CCC meeting.

*511 IAC 7-25-7 by failing to conduct an additional evaluation and convene the CCC within 60 instructional days of the date the parent's written consent for evaluation was received.

511 IAC 7-27-7(a) by failing to implement the student's IEP as written, specifically by changing the classroom assignment from an early childhood classroom to a kindergarten classroom.

511 IAC 7-27-7(a) by failing to implement the student's IEP as written, specifically by failing to provide speech therapy for two weeks in September, 2003.

511 IAC 7-27-6(a)(3) and (10) by failing to develop an IEP for the student that contains the required components, specifically a statement of the special education and related services and

supplementary aids and services to be provided to the student and an identification of the placement in the least restrictive environment.

511 IAC 7-27-7(b) by failing to designate a teacher of record who is responsible for the activities listed in 511 IAC 7-27-7(b) including the activities listed in 511 IAC 7-17-72.

511 IAC 7-21-6 by charging book rental fees in excess of the fees charged to nondisabled students.

*During the course of the investigation, one issue was reformulated because an inapplicable section of Rule 25 had been cited. The reformulated issue is:

511 IAC 7-25-5 by failing to notify the parent in writing within 10 business days that the independent educational evaluation will be at public expense.

The following issue was deleted:

511 IAC 7-25-7 by failing to conduct an additional evaluation and convene the CCC within 60 instructional days of the date the parent's written consent for evaluation was received.

FINDINGS OF FACT:

1. The Student is six years old and is eligible for special education and related services due to a communication disorder and other health impairment.
2. The Student was enrolled in an early childhood special education class within the boundaries of the school corporation of legal settlement during the period beginning April 30, 2003, and ending May 29, 2003. This period consisted of 17 instructional days, as the Student attended Monday through Thursday, and as school was not in session on Memorial Day (May 26, 2003). The Student's individualized education program (IEP) dated April 29, 2003, provided for transportation as a related service.
3. On or about May 1, 2003, the Parent and the Transportation Director discussed transportation, including the length of the bus ride and the possibility of changing the Student's enrollment from the morning class to the afternoon class. This discussion did not end in resolution. The Parent drove the Student to and from school for 9 days. The Parent then spoke to the Transportation Secretary who offered bus transportation. However, as the length of the bus ride was an hour or more, the Parent chose to continue driving the Student to and from school for the remaining 8 days of the 2002-2003 school year. The school corporation has no written policy limiting transit time. The school corporation did not reimburse, or offer to reimburse, the Parent for mileage.
4. On April 24, 2003, when the Student participated in Kindergarten round-up, the Student was promptly referred for an expedited speech/language evaluation to determine eligibility for special education and related services due to a suspected communication disorder. On April 29, 2003, the Student's case conference committee (CCC) met for the first time. April 24, 2003, was 3 instructional days before April 29, 2003.
5. On April 29, 2003, the Parent provided written consent for a comprehensive educational evaluation of the Student. By May 19, 2003, testing had been completed. On May 30, 2003, the CCC reconvened to discuss the educational evaluation and other matters. There is no documentation that the Report of Psychoeducational Evaluation was made available at the Student's school before the CCC meeting on May 30, 2003.
6. The Parent acknowledges receiving a copy of the Report of Psychoeducational Evaluation and the speech/language evaluation subsequently. Before this Complaint was filed, the Special Education Cooperative had revised the Permission for Multidisciplinary Team Evaluation form by adding the

following statement in boldface font: "A copy of the evaluation report will be available at your child's school 5 instructional days before the case conference."

7. Information from the Parent regarding the Student's medical history was incorporated into the Referral for Educational Evaluation, recorded in the Case Conference Summary/IEP dated April 29, 2003, summarized in the Social and Developmental History section of the Report of Psychoeducational Evaluation, and recorded in the Case Conference Summary/IEP dated May 30, 2003. Based upon consideration of the Student's medical history as reported by the Parent, the CCC found the Student eligible for special education and related services due to a health impairment. Because 511 IAC 7-26-12 requires a written diagnostic statement by a physician, and a physician's statement had not been provided as of May 30, 2003, the eligibility section of the May 30th Case Conference Summary/IEP contains the notation "Pending Medical Documentation." With written authorization from the Parent, further medical information was sought. The brief response did not include medical records or a written diagnostic statement.
8. On July 14, 2003, the Parent took the Student to a pediatric neurologist for an examination. The Case Conference Summary/IEP dated August 13, 2003, contains the Parent's summary of the pediatric neurologist's findings. With written authorization from the Parent, a copy of the pediatric neurologist's letter was obtained. By August 21, 2003, documentation of the Student's eligibility under Other Health Impairment was complete. Further testing by the pediatric neurologist has been conducted. However, reports of the pediatric neurologist's additional findings have not been provided to the Special Education Cooperative.
9. On August 21, 2003, during the CCC meeting, the Parent asked for an aide for the Student. Although an aide has not been assigned exclusively to the Student, there are aides in each of the Student's classrooms as well as an aide working with the Teacher of Record. Classroom aides are listed in the IEP among the persons responsible for implementation of various IEP goals and objectives. On August 21, 2003, the Parent signed the Permission for Placement section of the IEP, indicating agreement with the services recommended. Those services did not include a paraprofessional assigned to the Student. The Case Conference Summary/IEP Addendum dated August 21, 2003, makes no reference to a request for paraprofessional assistance, a denial of the request, or the reasons for the denial.
10. On November 12, 2003, during the CCC meeting, the Parent reiterated a request for an aide. The Assistant Director, who served as the representative of the public agency, acknowledges that, if the Parent made a request for paraprofessional assistance, the request was not heard by the Assistant Director. It is the practice of the Special Education Cooperative to respond orally to requests for services or placement and to make a record in the Case Conference Summary of the request and the response including reasons. No separate form is used to provide prior written notice of proposals or refusals. The Case Conference Summary/IEP Addendum dated November 12, 2003, makes no reference to a request for paraprofessional assistance, a denial of the request, or the reasons for a denial.
11. When the Student's CCC met on May 30, 2003, placement decisions were not made, and the CCC agreed to reconvene in August. On July 10, 2003, the school psychologist submitted a written request to schedule a CCC meeting in August before school begins. The School Corporations' first day of student attendance for the 2003-2004 school year was August 18, 2003. On August 6, 2003, the Parent called the Special Education Cooperative to inquire about the CCC meeting. By August 8, 2003, the Parent and other CCC members had been contacted by telephone regarding a mutually agreeable date and time. The CCC reconvened August 13, 2003.

12. The CCC continued its meeting on August 21, 2003. At the end of that meeting, it was agreed to meet again in late September. The CCC reconvened on October 1, 2003.
13. The Student's CCC reconvened on November 12, 2003. The IEP Addendum indicates that there would be a phone consultation in January, 2004, about curriculum and signing. The Parent approached the Principal about a CCC meeting in January. It is the responsibility of the Special Education Cooperative staff, not the Principal, to arrange CCC meetings. In this instance, however, the Principal stepped in to assist by asking the Parent for possible dates. Human errors occurred, and a CCC meeting was not scheduled for the date suggested by the Parent. No notice of a CCC meeting to be held in January, 2004, was mailed. On January 14, 2004, the Parent and an advocate came to the school for a CCC meeting that had not been scheduled.
14. In response to the Parent's request for a CCC meeting, the Student's CCC reconvened February 2, 2004.
15. There is no documentation that the IEP Addendum dated November 12, 2003, was given to the Parent or mailed to the Parent. With written authorization from the Parent, a copy was provided to the Advocate on January 16, 2004.
16. On November 12, 2003, the CCC agreed upon an independent speech/language evaluation to be conducted by a university speech/language clinic at public expense. No letter was sent to the Parent notifying the Parent that the independent education evaluation will be at public expense. The decision to arrange an independent evaluation was made orally during the CCC meeting and recorded in writing in the IEP Addendum dated November 12, 2003. (As the Parent objected to an evaluation by school personnel and written parental consent for an additional evaluation was not obtained, this evaluation is not an additional evaluation governed by the timeline of 511 IAC 7-25-7.)
17. Delays occurred in scheduling the independent evaluation because, as of mid-November, 2003, the university speech/language clinic would not setting any appointments for evaluations until the following semester. On February 11, 2004, the independent speech/language evaluation was conducted by the university speech/language clinic. On or about February 24, 2004, the report of the additional evaluation was received. A CCC meeting had been scheduled for March 2, 2004, to discuss the independent evaluation, and that meeting has been postponed at the request of the Parent until the following week.
18. With respect to the Student's placement, the Student's IEP Addendum as of August 21, 2003, called for a general education kindergarten class at School #1 in the morning, an early childhood class at School #2 in the afternoon, and certain additional services. The IEP Addendum dated October 1, 2003, records the CCC decision that the Student will increase time in the kindergarten at School #2 as of October 6, 2003 ("systemically increasing time"). It was also noted that placement would be evaluated on a continuing basis. The Parent's signature on the October 1st IEP Addendum indicates consent to the amended IEP.
19. The IEP Addendum dated November 12, 2003, summarizes teachers' oral reports of progress and refers to the Student's continued "current program of planned increasing time in the afternoon kindergarten session." The November 12th IEP Addendum includes a list of changes and continuations including: "...AM & PM kindergarten, less and less time in PreSchool;..."
20. The Student's IEP calls for 3 group speech/language sessions per week for a total of 60 minutes per week, beginning August 22, 2003. The IEP does not specify days of the week.

21. From August 22, 2003, through October 10, 2003, the Student was not scheduled for 3 sessions per week because the SLP was conducting hearing screenings. Instead, the SLP scheduled 2 sessions per week and extended the length of each session in order to provide 60 minutes per week. During the 7-week period from August 22, 2003, through October 10, 2003, the Student participated in 11 speech/language sessions, for a total of 330 minutes of speech/language services. The IEP called for a total of 420 minutes of service during a 7-week period. The speech/language pathologist (SLP) was not absent for two weeks in September, 2003.
22. Since October 13, 2003, there have been 3 speech/language sessions scheduled per week. During the period from October 13, 2003, to February 26, 2004, scheduled speech/language services have been provided as scheduled, except for 7 days when the SLP was absent, only 2 of which were due to the SLP's participation in training.
23. The Student's IEP is not found in a single document. It is the practice of the Special Education Cooperative to use an IEP Addendum to record changes made from time to time during the 12-month period that an IEP is in effect. An Addendum includes a summary of the CCC discussion and proposed/agreed changes, if any. Spaces are left blank in an Addendum when the CCC makes no change. The Student's IEP for the 2003-2004 school year began with some pages developed August 13, 2003, and some pages added/substituted August 21, 2003. Addenda were written on October 1, 2003; November 12, 2003; and February 2, 2004. Taken as a whole, the Student's IEP includes the following services/placement:
- Speech/language therapy 20 minutes; 3 times weekly: 2 in a.m. and 1 in p.m.
 - Instruction to reinforce pre-K skills (special education) 20 minutes; 4 times weekly
 - Morning general education kindergarten
 - Early childhood special education class with systematic transition to afternoon general education kindergarten, as described in Findings of Fact #18 and #19
 - Special transportation (including mid-day)
 - Program accommodations, as listed
24. With respect to the identification of a student's placement in the least restrictive environment (LRE), the IEP form used by the Special Education Cooperative incorporates percentages utilized in the statistical reporting system. As of August 13, 2003, when proposed placements under consideration were special education classes plus speech/language services, the Student's LRE was identified as special education services more than 60% of the instructional day (LRE 52). This identification of the LRE has not been changed, as each Addendum has left the following line blank: "If the above changes affect the percent of time the student spends in special services (including inclusion), please show the new percent: _____% and new Least Restrictive Environment Code: _____." Taken as a whole, the Student's IEP calls for the Student to spend more than half of the instructional day in general education settings with program accommodations that may be considered supplementary aids and services. The Special Education Cooperative acknowledges that the percentage has not been recalculated to reflect the Student's transition into the afternoon general education kindergarten.
25. Since August 13, 2003, a licensed special education teacher has been designated as the Student's teacher of record (TOR). The TOR is identified by name on page 9 of the IEP. (Page 9 has not been changed since August 13, 2003.) The TOR has signed some of the CCC attendance lists on a line for a Special Education Teacher, rather than on the line for the TOR. Some of the CCC Notification Letters have identified the TOR incorrectly. The Parent received IEP progress reports that identified another special education teacher as the TOR. The Special Education Cooperative acknowledges that errors in the paperwork have been made.

26. The TOR was not aware of the designation of TOR as of August, 2003. The TOR has provided direct services to the Student and has participated in each of the Student's CCC meetings. As a member of the team of teachers providing services to the Student, the TOR has served as a consultant and resource person to other personnel providing services to the Student. However, because the TOR did not know who had been designated as TOR, there is no documentation of fulfillment of all other duties of the TOR prior to the filing of this Complaint. The TOR, with the assistance of another teacher serving the Student, sought out and read general information about the Student's health impairment. However, the TOR and other staff serving the Student have not participated in specialized inservice training in the area of the Student's health impairment.
27. The Student is eligible by age for enrollment in kindergarten. However, the Student's CCC developed an IEP that called for services/placement in the early childhood program as well as kindergarten, in order to meet the Student's needs that result from the Student's disability. The school corporation of legal settlement assessed a kindergarten book rental fee, and in addition, the Special Education Cooperative, through its administering school corporation, assessed an early childhood fee of \$10 per semester. Although a few nondisabled peers who participate in the early childhood special education program are charged the same \$10 fee, no nondisabled kindergarten student participates in the special education early childhood program.
28. The school corporation of legal settlement determined that the Student's family meets the financial eligibility standard. The kindergarten fee was waived. On February 26, 2004, the Special Education Cooperative notified the Parent that the school corporation administering the early childhood program will refund the early childhood fee for first semester. If the fee for second semester has been paid, that fee will also be refunded.

CONCLUSIONS:

1. Findings of Fact #2 and #3 indicate that during a 17-day period in the spring of the 2002-2003 school year the Parent, rather than public school corporation of legal settlement, provided transportation for the Student and that 8 of the 17 days were at the choice of the Parent. Therefore, a violation of 511 IAC 7-21-7 occurred.
2. Finding of Fact #4 indicates that the School did not, and under the circumstances could not, make a copy of the initial speech/language evaluation report available at least 5 instructional days prior to the case conference committee (CCC) meeting held April 29, 2003. Finding of Fact #5 indicates that a copy of the Report of Multidisciplinary Team Evaluation was not made available to the Parent at least 5 instructional days prior to the CCC meeting scheduled for May 30, 2003. Therefore, violations of 511 IAC 7-25-4(k) occurred. However, Finding of Fact #6 indicates that corrective action has been taken.
3. Findings of Fact #7 and #8 indicate that the CCC documented and considered the Student's medical history, to the extent that the information was available. Therefore, no violation of 511 IAC 7-25-3(j) occurred.
4. Findings of Fact #9 and #10 indicate that the CCC has not considered the Parent's request for the related service, under 511 IAC 7-27-1(p), of paraprofessional(s) assigned to the Student or a group of students. The failure to consider the Parent's request for a related service has the same effect as a refusal and requires a statement of reasons for the determination. Therefore, a violation of 511 IAC 7-27-5(a) and (b) has occurred.

5. As Finding of Fact #12 indicates that a CCC meeting was not cancelled. Therefore, 511 IAC 7-27-2 does not apply to this issue. Findings of Fact #11, #12, and #13 indicate that, although the Student's CCC has reconvened within the general time frames previously agreed upon, the CCC was not convened when requested by the Parent in January, 2004. Therefore, a violation of 511 IAC 7-27-4(a)(3) occurred. However, Finding of Fact #14 indicates that appropriate corrective action was taken.
6. Finding of Fact #15 indicates that a copy of the written report of the CCC meeting was not provided to the Parent at the conclusion of the meeting or mailed to the Parent within ten (10) business days after the meeting. Therefore, a violation of 511 IAC 7-27-5(c) occurred.
7. Findings of Fact #15 and #16 indicate that the School failed to notify the parent in writing within 10 business days that the independent educational evaluation will be at public expense. Therefore, a violation of 511 IAC 7-25-7 occurred. However, Finding of Fact #17 indicates that this issue is moot, as an independent evaluation at public expense has been conducted.
8. Finding of Fact #18 indicates that, since October 1, 2003, the Student's agreed-upon IEP has incorporated pre-planned changes within the continuum, specifically transition in the afternoon from a special class to increasing amounts of instruction in a general education class. Finding of Fact #19 indicates that the change in setting has been implemented as planned. Therefore, no violation of 511 IAC 7-27-7(a) has occurred by changing the Student's classroom assignment from an early childhood classroom to a kindergarten classroom.
9. Findings of Fact #20, #21, and #22 indicate that the Student has not received the length, frequency, or total amount of speech/language services required by the Student's IEP, in particular during the first seven weeks of the 2003-2004 school year. Therefore, a violation of 511 IAC 7-27-7(a) occurred with respect to speech/language services.
10. Findings of Fact #18, #19, #23, and #24 indicate that the text of the Student's IEP contains the required components. The use of percentages is not required in an IEP, and the CCC is not required to include information under one component of a student's IEP that is already contained under another component of the same IEP. Therefore, no violation of 511 IAC 7-27-6(a)(3) and (10) occurred.
11. Findings of Fact #25 and #26 indicate that there was uncertainty and a lack of documentation regarding the designation of the teacher of record and the fulfillment of duties of the teacher of record. Therefore, a violation of 511 IAC 7-27-7(b) occurred.
12. Finding of Fact #27 indicates that the Student's parents were charged fees in excess of the fees charged to parents of other kindergarten students. Therefore, a violation of 511 IAC 7-21-6 occurred. However, Finding of Fact #28 indicates that appropriate corrective action has been taken.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

C A Beard Memorial School Corporation and the New Castle Area Programs for Exceptional Children shall:

1. By April 9, 2004, make a written offer to the Parent to reimburse the Parent for providing transportation for 9 days to and from the school the Student attended in the spring of the 2002-2003 school year, at a rate that is no less than the per mile rate at which employees of the school corporation are reimbursed

for travel. The offer of reimbursement shall include 18 round trips between the Student's home and the school (i.e., two round trips per school day).

Documentation of compliance, consisting of a copy of the written offer to the Parent, shall be submitted to the Indiana Department of Education, Division of Exceptional Learners by April 23, 2004.

2. By April 9, 2004, reconvene the Student's case conference committee (CCC) to consider the following:
 - a. The Parent's request for the related service of paraprofessional(s) assigned to the Student or a group of students.
 - b. Compensatory services that may be required to address the failure to provide the amount of speech/language services required by the IEP.

At the reconvened meeting, the CCC may consider additional matters and may develop a new IEP or the consolidate the existing IEP into a single document, rather than add another Addendum.

Documentation of compliance, consisting of a copy of the Case Conference Summary/IEP (or IEP Addendum), shall be submitted to the Indiana Department of Education, Division of Exceptional Learners by April 23, 2004.

3. By March 26, 2004, provide to the Parent a copy of the November 12, 2003 Case Conference Summary/IEP Addendum and any other of the Student's Case Conference Summaries/IEP Addenda requested by the Parent. Upon the Parent's request, assistance shall be provided to the Parent to compile and understand the documents.

Documentation of compliance, consisting of a list of the documents provided to the Parent and the date they were provided, shall be submitted to the Indiana Department of Education, Division of Exceptional Learners by April 23, 2004.

4. By March 26, 2004, develop and implement a recordkeeping system for documenting fulfillment of the duties of the Teacher of Record for the Student. By April 9, 2004, provide to the TOR specialized inservice training in the area of the Student's health impairment, and by April 16, 2004, provide by or under the direction of the TOR specialized inservice training of all professional and paraprofessional staff serving the Student.

Documentation of compliance, consisting of (a) a copy of the recordkeeping system, with sample documentation, and (b) a copy of the training materials and a list of the persons who received the specialized inservice training, shall be submitted to the Indiana Department of Education, Division of Exceptional Learners by April 23, 2004.